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7 CFR Ch. XVII (1–1–05 Edition)

Loan documents means the loan agreement, notes, and mortgage evidencing or used in conjunction with an RUS loan.

Mortgage means the mortgage, deed of trust, security agreement, or other security document securing an RUS loan.

Mortgaged property means any property subject to the lien of a mortgage.

RUS means the Rural Utilities Service and includes the Rural Telephone Bank.

RUS loan means a loan made or guaranteed by RUS.

(c) RUS may revise these requirements on a case by case basis for borrowers with unusual circumstances.

§ 1788.2 General insurance requirements.

(a) Borrowers will take out, as the respective risks are incurred, and maintain the classes and amounts of insurance in conformance with generally accepted utility industry standards for such classes and amounts of coverage for utilities of the size and character of the borrower and consistent with Prudent Utility Practice. Prudent Utility Practice shall mean any of the practices, methods, and acts which, in the exercise of reasonable judgment, in light of the facts, including but not limited to, the practices, methods, and acts engaged in or approved by a significant portion of the electric utility industry in the case of an electric borrower or of the telecommunications industry in the case of a telecommunications borrowers prior thereto, known at the time the decision was made, would have been expected to accomplish the desired result consistent with cost-effectiveness, reliability, safety, and expedition. It is recognized that Prudent Utility Practice is not intended to be limited to optimum practice, method, or act to the exclusion of all others, but rather is a spectrum of possible practices, methods, or act which could have been expected to accomplish the desired result at the lowest reasonable cost consistent with cost-effectiveness, reliability, safety, and expedition.

(b) The foregoing insurance coverage shall be obtained by means of bond and policy forms approved by regulatory

authorities having jurisdiction, and, with respect to insurance upon any part of the mortgaged property securing an RUS loan, shall provide that the insurance shall be payable to the mortgagees as their interests may appear by means of the standard mortgagee clause without contribution. Each policy or other contract for such insurance shall contain an agreement by the insurer that, notwithstanding any right of cancellation reserved to such insurer, such policy or contract shall continue in force for at least 30 days after written notice to each mortgagee of suspension, cancellation, or termination.

(c) In the event of damage to or the destruction or loss of any portion of the mortgaged property which is used or useful in the borrower's business and which shall be covered by insurance, unless each mortgagee shall otherwise agree, the borrower shall replace or restore such damaged, destroyed, or lost portion so that such mortgaged property shall be in substantially the same condition as it was in prior to such damage, destruction, or loss and shall apply the proceeds of the insurance for that purpose. The borrower shall replace the lost portion of such mortgaged property or shall commence such restoration promptly after such damage, destruction, or loss shall have occurred and shall complete such replacement or restoration as expeditiously as practicable, and shall pay or cause to be paid out of the proceeds of such insurance form all costs and expenses in connection therewith.

(d) Sums recovered under any policy or fidelity bond by the borrower for a loss of funds advanced under a note secured by a mortgage or recovered by any mortgagee or holder of any note secured by the mortgage for any loss under such policy or bond shall, unless applied as provided in the preceding paragraph, be used as directed by the borrower's mortgage.

(e) Borrowers shall furnish evidence annually that the required insurance and fidelity coverage has been in force for the entire year, and that the borrower has taken all steps currently necessary and will continue to take all steps necessary to ensure that the coverage will remain in force until all

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loans made or guaranteed by RUS are paid in full. Such evidence shall be in a form satisfactory to RUS. Generally a certification included as part of the RUS Financial and Statistical Report filed by the borrower annually (RUS Form 7 or Form 12 for electric borrowers, RUS Form 479 for telecommunications borrowers, or the successors to these forms) is sufficient evidence of this coverage.

§ 1788.3 Flood insurance.

(a) Borrowers shall purchase and maintain flood insurance for buildings in flood hazard areas to the extent available and required under the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4001, *et seq.*) The insurance should cover, in addition to the building, any machinery, equipment, fixtures, and furnishings contained in the building.

(b) The National Flood Insurance Program (see 44 CFR Part 59 *et seq.*) provides for a standard flood insurance policy; however, other existing insurance policies which provide flood coverage may be used where flood insurance is available in lieu of the standard flood insurance policy. Such policies must be endorsed to provide:

(1) That the insurer give 30 days written notice of cancellation or non-renewal to the insured with respect to the flood insurance coverage. To be effective, such notice must be mailed to both the insured and RUS and other mortgagees if any and must include information as to the availability of flood insurance coverage under the National Flood Insurance Program, and

(2) That the flood insurance coverage is at least as broad as the coverage offered by the Standard Flood Insurance Policy.

§ 1788.4 Disclosure of irregularities and illegal acts.

(a) Borrowers must immediately report, in writing, all irregularities and all indications or instances of illegal acts in its operations, whether material or not, to RUS and the Office of the Inspector General (OIG). See 7 CFR 1773.9(c)(3) for OIG addresses. The reporting requirements for borrowers are the same as those for CPA's set forth in § 1773.9

(b) Borrowers are required to make full disclosure to the bonding company of the dishonest or fraudulent acts.

§ 1788.5 RUS endorsement required.

In the case of a cooperative or mutual organization, RUS requires that the following:

Endorsement Waiving Immunity From Tort Liability'' be included as a part of each public liability, owned, non-owned, hired automobile, and aircraft liability, employers' liability policy, and boiler policy:

The Insurer agrees with the Rural Utilities Service that such insurance as is afforded by the policy applies subject to the following provisions:

1. The Insurer agrees that it will not use, either in the adjustment of claims or in the defense of suits against the Insured, the immunity of the Insured from tort liability, unless requested by the Insured to interpose such defense.

2. The Insured agrees that the waiver of the defense of immunity shall not subject the Insurer to liability of any portion of a claim, verdict or judgment in excess of the limits of liability stated in the policy.

3. The Insurer agrees that if the Insured is relieved of liability because of its immunity, either by interposition of such defense at the request of the Insured or by voluntary action of a court, the insurance applicable to the injuries on which such suit is based, to the extent to which it would otherwise have been available to the Insured, shall apply to officers and employees of the Insured in their capacity as such; provided that all defenses other than immunity from tort liability which would be available to the Insurer but for said immunity in suits against the Insured or against the Insurer under the policy shall be available to the Insurer with respect to such officers and employees in suits against such officers and employees or against the Insurer under the policy.

§ 1788.6 RUS right to place insurance.

If a borrower fails to purchase or maintain the required insurance and fidelity coverage, the mortgagees may place required insurance and fidelity coverage on behalf and in the name of the borrower. The borrower shall pay the cost of this coverage, as provided in the loan documents.